



POLICE DEPARTMENT

February 23, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Gerard Galluccio
Tax Registry No. 945745
63 Precinct
Disciplinary Case No. 2013-10510

The above-named member of the Department appeared before me on October 6, 2014, charged with the following:

1. Said Police Officer Gerard Galluccio, while on-duty and assigned to the 63 Precinct, on or about June 5, 2013, was discourteous to on-duty New York Police Department Sergeant Arminda Pereira, Tax No. 935450, to wit; when said Sergeant did instruct said Police Officer regarding his duties and responsibilities while testifying in court, said Police Officer did speak to said Sergeant in a loud tone and did not allow said Sergeant to speak.

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT

The Department Advocate's Office was represented by Pamela Naples, Esq.
Respondent was represented by John Tynan, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the hearing record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on June 5, 2013, Respondent was on duty, in uniform, assigned to the 63 Precinct, that he reported to the Brooklyn South Traffic Violations Bureau, and that he testified inside Hearing Room Number 3 (the hearing room) regarding a summons that he had issued to a motorist who represented himself at the hearing and cross-examined Respondent. The hearing officer found the motorist guilty of the violation cited in the summons that Respondent had issued to him. Just after Respondent and the motorist had left the hearing room, Respondent spoke to the motorist and the motorist spoke back to him. Sergeant Arminda Pereira, who was assigned to the Internal Affairs Bureau's (IAB) Court Monitoring Unit and was dressed in plainclothes, approached Respondent and the motorist.

The Department Advocate's Case

The Department Advocate called Sergeant Arminda Pereira and Sergeant Venitra Matthews as witnesses.

Sergeant Arminda Pereira

Pereira testified that after she heard Respondent loudly tell the motorist, "You did really well in there," the motorist immediately turned around. Since it appeared to

Pereira that the motorist was going to engage Respondent in a conversation and since Pereira wanted to prevent this from occurring, she "stepped in," put her "hand out," and asked Respondent, "What are you doing?" She then told Respondent, "Officer, you need to stop." Respondent loudly asked her, "Who are you?" Respondent looked down and after he saw the sergeant's shield that was displayed on her waist, he said, "Oh, sorry Sarge." She then instructed Respondent that he was not permitted to speak to a "motorist he just had a case with." This was the first contact she had ever had with Respondent.

Pereira told Respondent to go back into the hearing room and he did so. Shortly thereafter, she asked Respondent to step back outside the hearing room. Since Pereira was unsure whether Respondent was aware of what constituted proper "court demeanor," she began to "advise him" that an officer is "not allowed to speak to" any motorist "he just had a case" with in the hearing room. Respondent loudly told her, "You reprimanded me in front of other officers. That's unprofessional and disrespectful." Pereira testified that Respondent "just kept repeating that statement in a loud tone of voice."

Pereira testified that to avoid causing a scene outside the hearing room, she then asked Respondent to come with her to the police room and he did so. Inside the police room, Respondent "just continued speaking." He repeated that Pereira's action of reprimanding him in front of other officers was "disrespectful and discourteous."

On cross-examination, Pereira testified that although the Patrol Guide contains no procedure which forbids an officer from speaking to a motorist after a hearing, IAB had issued a regulation which states that an officer cannot speak to a motorist or to a motorist's attorney in regard to any case and that this regulation was posted on the wall of the police room at the Brooklyn South Traffic Violations Bureau. Although Pereira did

not know when the regulation had been issued or posted, it was already on the wall when Pereira was assigned to perform Court Monitoring Unit duties there.

Pereira confirmed that the only thing she heard Respondent say to the motorist as they left the hearing room was a statement to the effect that "You did a great job in there." Pereira agreed that, since she had never had any previous contact with Respondent, she would normally have first identified herself to Respondent by stating her rank and her name. However, the motorist immediately turned around, faced Respondent, and said something to Respondent that Pereira could not recall. To end this conversation, she separated Respondent from the motorist by sticking her arm in between them and she told Respondent, "Officer, you need to stop" in a stern, louder than normal voice without first identifying herself. Pereira agreed that her action of correcting Respondent in front of other officers was not the normal course of action for a supervisor to take and that Respondent had in some respects been right when he told her that her action had been inappropriate.

A CD of a recording made by a machine located in the hearing room [Respondent's Exhibit (RX) A] was played for Pereira. [The recording reflects that the "██████" case was being called before the hearing officer. This was the next case that was called after Respondent's case with the motorist concluded.] When Pereira was asked if she heard "background voices" emanating from outside the hearing room on this recording, she answered that she only heard "background noises" and that she could not distinguish any voices on this recording.

After Pereira escorted Respondent into the police room, Respondent started

loudly “speaking over me.” Pereira testified that she then told Matthews that she was going to call “the captain.” Pereira was asked if she had been frightened of Respondent inside the police room. She answered that she only felt scared of Respondent when, after she, Matthews, and another sergeant informed Respondent that he would be receiving a Command Discipline (CD), he suddenly stood straight up from the chair he had been sitting in and told her “No” in a “very loud and boisterous tone.” Pereira confirmed that Respondent did not lunge at her or reach for her.

Sergeant Venitra Matthews

Matthews recalled that on June 5, 2013, she was on duty, assigned to IAB’s Court Monitoring Unit, working inside the police room at the Brooklyn South Traffic Violations Bureau when Respondent, who Matthews knew, entered the police room with Pereira. Matthews testified that she heard Respondent “yelling, saying, ‘But to reprimand me in front of other officers’ ” as Pereira “was just saying to calm down.” Matthews recalled that Respondent appeared “angry” and was “flailing his arms back and forth.” Matthews testified that Pereira told Respondent that the reason she had brought him into the police room was so that they would be out of the earshot of the other officers. Matthews recalled that as Pereira “was trying to say things to” Respondent, “he would over-talk her.”

On cross-examination, Matthews confirmed that when Pereira told Respondent to “calm down,” she said this in a stern voice, that she repeated “Calm down” several times as “they were going back and forth” and that Respondent “started yelling, and she’s

telling him to calm down and she is explaining why she brought him into the police room, and while she's trying to explain, he's cutting her off."

Matthews confirmed that Respondent "was yelling" but when she was asked if Respondent had been screaming, she answered, "I wouldn't say screaming, but yelling." Matthews recalled that when Respondent was flailing his arms, Pereira was only a foot or two away from him. When she was asked if Respondent had been flailing his arms wildly, she answered, "I wouldn't say wildly." She stated that Respondent was not flailing his arms so much that he needed to be restrained. She stated that she was not scared by Respondent's arm movements and that he never lunged at Pereira or gestured at her in a menacing manner. Matthews described Respondent's arm movements as sometimes motioning toward Pereira and sometimes motioning toward the door "when he was talking about something that happened outside of the room."

On redirect examination, Matthews confirmed that Police Officer Ashby, who works in the police room, was also present during the verbal exchange between Respondent and Pereira.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent related that he had previously testified in the same hearing room regarding other summonses that he has issued to motorists, but that it was a somewhat unusual occurrence for a motorist to personally pose questions to him at a hearing.

Although Respondent had never personally previously issued a summons to this motorist, he recognized the motorist. After the hearing officer announced that he was finding the motorist guilty regarding the summons Respondent had issued to him, Respondent followed behind the motorist as he walked out of the hearing room.

Since Respondent believed that the motorist had done a good job of questioning him at the hearing, he told the motorist, "You did a good job." Respondent explained that he genuinely meant what he had said to the motorist and that he was not ridiculing him or being sarcastic. The motorist responded by saying something like, "You guys." Respondent asserted that as soon as the motorist said this, Pereira "stepped in and started yelling at me" and even though "she had her back turned to me at that time" and was standing only about a foot away from him, "she started screaming at me in front of everybody." Respondent asserted that motorists who were standing on line to pay their summonses and police officers who were inside the hearing room all stopped what they were doing and turned to look at him and Pereira.

Since Pereira was not in uniform and since she had not identified herself to Respondent, he was initially unsure whether she was a member of the service until, about ten seconds after she accosted him, he noticed her shield and her firearm on her waist. When he saw these he immediately apologized to her. The CD recording (RX A) was played for Respondent who then stated that he could not hear his own voice or Pereira's voice among the voices emanating from outside the hearing room.

Respondent went back into the hearing room, as did Pereira. They remained seated there about seven minutes until she approached him, put her "finger in my face" and said "Come on." He followed her into the police room where "she started to yell at

me again.” He asked Pereira “not to belittle me in front of the public and the other police officers that were there.” He could not recall Pereira’s response. He complied with her direction to sit down and to hand her his ID card. He then telephoned his union delegate. When Pereira informed him that he would be receiving a CD for discourtesy, he told her that he had not been discourteous to her.

On cross-examination, Respondent testified that he was not aware that Matthews and other people who worked inside the police room were members of the service.

FINDINGS AND ANALYSIS

It is charged that Respondent was discourteous to Pereira in that when she was instructing him regarding his duties and responsibilities while testifying in court he spoke to her in a loud tone and he did not allow her to speak.

I find Respondent Guilty because Pereira’s testimony that inside the police room Respondent addressed her in a loud tone and did not allow her to speak was corroborated by Matthews. Pereira testified that as she was attempting to explain to Respondent why she had instructed him, “he was speaking over me” by loudly repeating his previous complaint that her action of instructing him in front of other officers was disrespectful. (Tr. p. 57) Matthews recalled that as Pereira “was trying to say things to” Respondent, “he would over-talk her” (Tr. p. 74) and that when Pereira tried to explain to him why she had brought him into the police room “he’s cutting her off.” (Tr. p. 75)

I credit Pereira’s version of this event because on cross-examination she candidly agreed that she had separated Respondent from the motorist by sticking her arm in between them and stating, “Officer, you need to stop” in a stern, louder than normal voice

when she had not yet indentified herself to Respondent. Most significantly, Pereira agreed that her action of instructing Respondent in front of other officers was not the normal course of action for a supervisor to take and, therefore, Respondent had in some respects been correct when he told her that her action had been inappropriate.

Matthews was not shown to have any motive to falsely assert that Respondent “was yelling” at Pereira and not allowing her to speak by talking over her and by “cutting her off.” Moreover, Matthews’ testimony has the ring of truth because she did not exaggerate Respondent’s voice level or his physical movements. When Matthews was asked on cross-examination if Respondent had been screaming at Pereira, she answered, “I wouldn’t say screaming, but yelling.” When she was asked if Respondent had been flailing his arms wildly, she answered, “I wouldn’t say wildly.” Lastly, she candidly confirmed that there was never any need to restrain Respondent; that she was not frightened by Respondent’s arm movements; and that Respondent never lunged at Pereira or gestured at her in a menacing manner. (Tr. p. 76-79)

Finally, the fact that the CD [Respondent’s Exhibit A] reflects that there was no yelling among the background voices that are heard conversing outside the hearing room immediately after Respondent’s case with the motorist had concluded, does not serve to impeach Pereira’s testimony merely because Respondent is not heard on the CD speaking loudly. Moreover, since I find that Respondent’s discourteous action of addressing Pereira in a loud tone and not allowing her to speak took place inside the police room, not outside the hearing room, this recording is not dispositive regarding this charge.

In conclusion, even though Pereira agreed that her action of instructing Respondent in front of other officers outside the hearing room was in some respects

inappropriate, since Pereira was a supervisor, Respondent was not permitted to yell at her or prevent her from addressing him by talking over her inside the police room in front of two other members of the service.

Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on Jan. 7, 2008. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

In determining a penalty recommendation I have taken into consideration that Respondent has no prior formal disciplinary record and that Respondent did not use any profanity.

The Assistant Department Advocate (the Advocate) recommended that Respondent's penalty consist of the forfeiture of 15 vacation days. The Advocate did not cite any previous disciplinary decisions to support this penalty recommendation.

In recent decisions, 15 vacation day penalties have generally been imposed only where the discourteous remark included profanity; and/or the officer had a prior formal disciplinary record; and/or the officer engaged in additional misconduct or was discourteous to a supervisor on more than one occasion. For example, in *Case No. 2013-10939* (Jan. 22, 2014), a 20-year detective who had a prior disciplinary adjudication

forfeited 15 vacation days after she pleaded guilty to being discourteous to a supervisor by speaking loudly and directing profanity toward the supervisor.

Also, in *Case No. 2012-8102* (May 22, 2014), a seven-year police officer with no prior disciplinary record forfeited 15 vacation days after she pleaded guilty to being discourteous by talking back to a sergeant and walking away while the sergeant was issuing her instructions and also being discourteous to a civilian by raising her voice, pointing her finger, and speaking to the civilian in an accusatory fashion.

Finally, in *Case No. 2011-5794* (May 23, 2014), a nine-year officer who had a prior disciplinary adjudication forfeited 15 vacation days after he was found guilty of being discourteous to a sergeant on two occasions.

The discourteous conduct Respondent engaged in here appears to more closely resemble the discourteous conduct presented in three other disciplinary decisions. In *Case No. 2010-2021* (Feb. 19, 2013), a 15-year police officer with no prior disciplinary record forfeited ten vacation days after he was found guilty of being discourteous to a sergeant in the roll call room in front of other members of the service based on his tone of voice and his demeanor in addressing the sergeant.

Also, in *Case No. 2011-3646* (June 6, 2013), a 16-year officer with no prior disciplinary record forfeited ten vacation days after he was found guilty of discourteously making comments during roll call after the lieutenant who was conducting roll call had repeatedly requested that he remain silent.

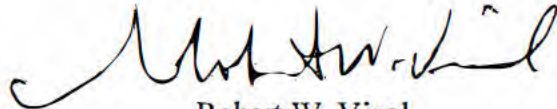
Finally, in *Case No. 2012-6774* (June 6, 2013), an eight-year officer who had no prior disciplinary record forfeited ten vacation days after he was found guilty of

discourteously telling a sergeant, "If I'm such a perp (perpetrator), I should slam this door in your face like a perp."

In determining a penalty recommendation I have also taken into consideration that Respondent has never been placed on monitoring and that he has received consistently good performance evaluations. Thus, Respondent's discourteous conduct here appears to be an aberration from the manner in which he normally addresses supervisors.

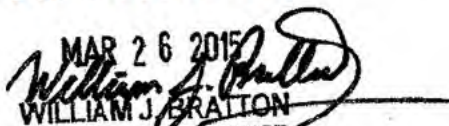
Therefore, it is recommended that Respondent forfeit ten vacation days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED

MAR 26 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

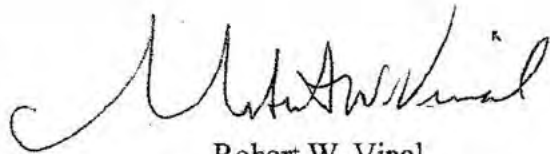
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER GERARD GALLUCCIO
TAX REGISTRY NO. 945745
DISCIPLINARY CASE NO. 2013-10510

Respondent received an overall rating of 3.5 on his 2014 and 2013 performance evaluations, and a 4.0 on his 2012 evaluation. He has one Meritorious Police Duty medal. [REDACTED]

[REDACTED] He has no monitoring records and no formal disciplinary record.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner - Trials